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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,522	08/24/2000	Zeev Maor	00654759	8228

7590 07/28/2004

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EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/582,522

Applicant(s)

MAOR ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

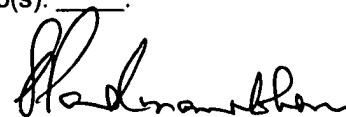
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3-6,10,12,13,15-19 and 21-24.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: a) First, the Examiner respectfully directs Applicant to the guidelines for showing unexpected results. It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. Ex parte Gelles, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing" In re Lohr, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, In re Linder, 17 USPQ 356 (CCPA 1972).

It is first respectfully pointed out that the instant data provided in the declaration is not commensurate in scope with the instant claims, especially the instant independent claims. The non-ionic solubilizer and the hydrophobic active in the independent claims can be any non ionic solubilizer or hydrophobic active, but the instant declaration provides data for only tween-20 or 80 as the non-ionic solubilizer, and vitamin E acetate as the hydrophobic active. Additionally, Applicant has provided no comparative data with the closest prior art. It is respectfully pointed out that in the Interview of 6/28/04, it was conveyed that a declaration must provide comparative data.